IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2178 OF 2007

Anupam Nemani. ... Petitioner.

Versus.

Mira Nemani. ... Respondent.

Ms.Lata Desai i/by Ms.Pallavi Devekar for the Petitioner.

Shri Jayesh Bhatt for the Respondent.

CORAM : ABHAY S.OKA, J.

DATED : 20th June, 2007.

P.C.:

1. Heard the learned Advocates appearing for the parties. Considering the fact that the petition arises out of a pending matrimonial dispute, the same is taken up for final hearing at the admission stage.

2. The Petitioner is the husband and the Respondent is the wife. The Petitioner has filed a petition in the Family Court at Bandra for dissolution of the marriage. The said petition is part heard and the some of the witnesses have been examined. The challenge in this petition under Article 227 of the Constitution of India is to the order dated 28th February 2007 passed by the learned Judge of the Family Court below Application at Exh.55. The Application at Exh.55 was filed by the

Petitioner-husband praying for the following reliefs:

(a) Petitioner be permitted to carry out the correction in the title as under:

. "In the matter of Section 13(1')(i), (ia)" of the Hindu Marriage Act, 1955.

(b) Addtional issue be framed as under: "Whether the Petitioner proves that the Respondent has treated him with cruelty."

3. The submission of the learned Counsel for the Petitioner is that in fact in the petition, the ground of cruelty is already pleaded. She stated that the Petitioner has led evidence on the said ground and she does not want to lead any additional evidence. She submitted that there are averments made in the petition filed by the Petitioner as regards the ground of cruelty. She stated that including the Petitioner so far four witnesses have been examined. The Petitioner has filed a pursis in the Family Court for deferring the recording of evidence of a witness Shri Milind Mehta as certain audio cassettes have been sent to an expert. She stated that except Shri Milind Mehta, the Petitioner does not want to examine any other witness. She stated on instructions that the Petitioner and his witnesses who were already examined will be kept present to enable the Respondent to cross-exmaine the said witnesses if

the Respondent so desires. She submitted that the learned trial Judge has taken a very hyper-technical approach and in fact the Application ought to have been allowed. The learned Advocate for the Respondent submitted that the Application at Exh.55 was belatedly made by the Petitioner after substantial part of the evidence was recorded. He submitted that prejudice will be caused to the Respondent if the Application for amendment is allowed. He submitted that as a consequence of allowing the said application, an issue of cruelty will have to be framed and therefore, the Respondent will suffer prejudice as he has already cross examined the witnesses examined by the Petitioner.

4. I have considered the submissions. By the Application at Exh.55 what was sought to be amended was only the description of the petition in the cause title of the petition by stating that the petition was filed for claiming a decree of divorce on the grounds specified in section 13(1)(i) and section 13(1)(ia) of the Hindu Marriage Act, 1955. A categorical assertion has been made by the Petitioner that he does not want to lead any further evidence as the evidence on the issue of cruelty has been already adduced. The Petitioner has offered to keep present his witnesses for further cross-examination.

5. This is not a case where as a consequence of the amendment, the Petitioner wants to lead any further evidence. In fact the Petitioner wants to rely upon the evidence which is already adduced. The witnesses examined by the Petitioner have been cross-examined on all factual aspects. In fact the amendment is only of a technical nature for incorporating the sections in the cause title under which the relief is sought in the petition filed by the Petitioner. The only amendment sought is reflected in prayer (a) of the application at Exhibit 55. It reads thus:

> a) Petition be permitted to carry out the correction in the title as under: "In the matter of Section 13(1)(i), (ia) of the Hindu Marriage Act, 1955".

Tehre was no reason to refuse such an amendment.

6. In so far as the framing of an additional issue on cruelty is concerned, it is well settled proposition of law that the Court can amend the issues or frame additional issues at any stage of the proceedings on the basis of pleadings and material on record.

7. In the present case, no averments are sought to be added or any material in the form of evidence is sought to be produced. In my view the learned trial

Judge has taken a very hyper-technical view of the matter. the Application at Exh.55 ought to have been allowed. As stated earlier, it will be open for the Respondent to make further cross-examination of the Petitioner and his witnesses who were already examined.

8. Hence the following order is passed:

(i) The impugned order dated 28th February 2007 is quashed and set aside and the Application at Exh.55 made by the Petitioner is allowed.

(ii) It is made clear that the Petitioner will not be entitled to lead further evidence save and except the evidence of witness Shri Milind Mehta.

(iii) The Petitioner has examined himself, Shri Sunil More, Shri Sunil Sharma and Shri Banwarilal Poddar as witnesses. The Petitioner will remain present before the trial Court on the next date and will ensure the presence of other three witnesses who have been already examined. It will be open for the Respondent to further cross examine the Petitioner and

the other winesses in the light of the amendment.

(iv) It will be also open for the Respondent to submit a supplementary list of witnesses in case the Respondent desires to examine additional witnesses.

(v) It is obvious that as a consequence of the amendment of the petition, it will be open for the Respondent to file additional written statement.

(vi) The petition filed by the Petitioner is of the year 2004. The Family Court will decide the said petition as expeditiously as possible and in any event on or before end of February 2008. The parties will cooperate with the trial Court for expeditious disposal of the petition and will not seek adjournment on unnecessary ground.

(viii) The petition is partly allowed in the above terms.

(ix) The Petitioner will pay a sum of Rs.7500/-

to the Respondent by way of costs of this petition.

(x) Writ to be send immediately.

Judge.